

# **EXHIBIT A**



## Encompass® Ellie Mae Services Agreement (EMSA)

Account Manager: Todd Borillo

Date 8/12/2010

Valid until 8/12/2010

This Order Form, as may be amended from time to time ("Order Form"), which forms a part of the Encompass Ellie Mae Services Agreement ("Agreement") is entered into by and between Ellie Mae, Inc., a Delaware corporation with principal offices at 4155 Hopyard Road, Suite 200 Pleasanton, CA 94588 ("Ellie Mae"), and GMI Home Loans LLC, a Corporation ("Customer").

<b>BILL TO</b>	Company Name: GMI Home Loans LLC Contact Name: Glen Lemeshev Address: 195 Route 9, Suite 109 Manalapan, NJ 07726 Telephone: (732) 837-1401 Email: glen.lemeshev@gmihomeloans.com Client ID: 11109071	<b>SHIP TO</b>	Company Name: GMI Home Loans LLC Contact Name: Glen Lemeshev Address: 195 Route 9, Suite 109 Manalapan, NJ 07726 Telephone: (732) 837-1401 Email: glen.lemeshev@gmihomeloans.com Client ID: 11109071
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Effective Date (This Agreement is effective on the date of Ellie Mae's signature)  
 Initial Term: Twelve (12) months from Effective Date

Product Description	Product Code	Qty	Unit List Price	Net Price	Extended Price
Encompass360 Banker Self Hosted Download Base License	JW22				
Encompass360 Banker Self Hosted Download User License	JW23				
Encompass 12 Month Payment Option Fee	JP20				
Training Season Pass	EA62				
<b>Subtotal:</b>					
(\$15.00 Ground, \$30 Overnight) Shipping:					
(Applicable tax must be included with payment) Estimated Tax:					
<b>Total Due at Signing:</b>					

Annual Maintenance Fee for Renewal Term:

Renewal Date:

12 months from sign up.

Special Terms:

Payment Instructions:

I hereby authorize the set-up fees to be charged to:

M/C ☐VISA ☒AMEX ☐DISCOVER ☐

Name on the Card:

Card #:

Exp. Date:

I understand and agree that all monthly recurring service fees will be charged to ☒ credit card ☐ ACH form with voided check\*

☐ Company Check or ☐ ACH, separate form required with copy of voided check

\*Please mail your check to Ellie Mae, Attn. Sales Support to this address: 4155 Hopyard Road, Suite 200 Pleasanton, CA 94588

Please note that your order will be processed upon receipt of the payment and signed Agreement.

Client acknowledges that the selections marked above (and only those selections) are incorporated into and form a part of this Agreement, and that the General Terms and Conditions, the portions of the Ellie Mae Web Site referred to therein and any attached Exhibits, Schedules and Appendices apply to the selections above. This Agreement is not valid until accepted by Ellie Mae. (If this Order Form is being used to renew an existing Agreement or to order additional or modified Products and Services, the terms and conditions of this Agreement shall replace in their entirety the terms and conditions of the original Agreement as they relate to all future rights and obligations of the parties from and after the Effective Date of this Agreement.)

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the Effective Date, unless otherwise noted above

ELLIE MAE, INC.  
 Signature: [Signature]  
 Name: Todd Borillo  
 Title: VP of Sales  
 Date: 8-27-2010

Account Manager: Todd Borillo

Client Name: QMI Home Loans LLC  
 Signature: [Signature]  
 Name: Glen Lamesher  
 Title: President  
 Date: 8-16-10

Client ID Number: 11109071

Please review and initial all pages of agreement

Please return Agreement via efax: (408) 330-1830

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## ENCOMPASS ELLIE MAE SERVICES AGREEMENT

This Encompass Ellie Mae Services Agreement ("Agreement") is entered into by and between Ellie Mae, Inc., a Delaware corporation with principal offices at 4155 Hopyard Road, Suite 200 Pleasanton, CA 94588 ("Ellie Mae"), and the Customer ("Customer") identified on the Order Form attached to this Agreement.

WHEREAS, Ellie Mae has developed a line of products and services relating to mortgage and loan origination and processing; and

WHEREAS, Customer wishes to license the Ellie Mae products and services identified on the Order Form attached to this Agreement and Ellie Mae is willing to provide Customer such products and services on the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants and premises contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Ellie Mae and Customer hereby agree as follows:

# 1. THE SERVICE.

1.1. **Products and Service.** Subject to the terms and conditions of this Agreement, during the term of this Agreement, Ellie Mae will provide the software, products and services (the "Service") listed on the first page of this Agreement (the "Order Form").

1.2. **License.** Subject to the terms and conditions of this Agreement, during the term of this Agreement, Ellie Mae grants to Customer a non-exclusive, perpetual (except as otherwise stated herein), non-transferable, revocable and limited license for the number of Customer's employees ("End-Users"), as reflected on the Order Form, to access and use the Service for the sole purpose of performing loan origination, loan processing, and loan closing services for Customer's customers. Customer shall not permit any third party to access or use the Service. In the event Customer desires to increase the number of End-Users, and Ellie Mae desires to provide such additional licenses, the parties shall enter into an amended Order Form ("Amended Order Form") which shall supersede and replace the prior Order Form in its entirety and cause such prior Order Form to be null and void, both of which shall be effective on the first day of the following month. Customer acknowledges and agrees that the Service Fees (as defined below) shall be adjusted to reflect the increase in the authorized number of End-Users able to access the Service; provided, however, Customer may reduce the number of End-Users by providing Ellie Mae with at least thirty (30) days' written notice prior to the beginning of any Renewal Term for such Renewal Term (as defined below).

1.2.1 **License to Encompass360 Software.** Included in Customer's license to the Service is the right to access and use the Encompass360™ Software in machine-readable object code form only, for the number of End-Users reflected on the Order Form or Amended Order Form, as applicable. A license for the Encompass360 Software may not be shared or used concurrently on different computers or devices; provided, however, Customer may copy the Encompass360 Software only as reasonably needed for backup, provided that all copyright and other proprietary rights notices set forth on or in the original Encompass360 Software is reproduced on all such copies. Ellie Mae will provide Customer with a client ID, its password for logging into and instructions for installing the Encompass360 Software. **CUSTOMER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF USER ID OR PASSWORD. IF THERE IS A BREACH OF SECURITY THROUGH CUSTOMER'S ACCOUNT, THEN CUSTOMER WILL BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO THE ENCOMPASS360 SOFTWARE ATTRIBUTABLE TO THE UNAUTHORIZED USE OF THE USER ID AND/OR PASSWORD.**

1.2.2 **License to the Encompass SDK.** Included with the license to the Encompass360 Software is the right to use Ellie Mae's Software Development Kit for Encompass (the "SDK"). In the event Customer desires to activate the SDK, Ellie Mae will provide a license code key that enables the SDK to be used. **CUSTOMER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF SUCH LICENSE CODE KEY. IF THERE IS A BREACH OF SECURITY THROUGH CUSTOMER'S ACCOUNT, THEN CUSTOMER WILL BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO THE ENCOMPASS360 SOFTWARE ATTRIBUTABLE TO THE UNAUTHORIZED USE OF THE LICENSE CODE KEY.** The number of SDK licenses may not exceed the authorized number of End-Users set forth in the Order Form or Amended Order Form, as applicable. Use of the SDK is subject to the additional restrictions specific to the SDK, as set forth in Section 1.3 below. Ellie Mae shall have the right to monitor usage of the SDK under this Agreement to verify Customer's compliance with the limitations set forth in this Section 1.2.2. Ellie Mae retains the right to perform system audits periodically to ensure the proper use of the SDK. Such audits shall be performed at the cost of Ellie Mae and shall not disrupt Customer's normal business activity.

1.2.3 **Ownership of Ellie Mae Software, Products and Services Provided.** The grant of the licenses set forth herein provides neither title nor intellectual property rights to the Encompass360 Software and other products and services provided hereby (collectively referred to herein as (the "Software"), and the patents, trademarks, trade secrets, copyrights or other intellectual property embodied or used in connection therewith, except for the rights expressly granted herein. The Software, its structure, organization and code, and all documentation relating to the Software, are the confidential and proprietary property of Ellie Mae and/or its licensors, and all right, title and interest in and to such property and any and all copies of the Software (in whole or in part, and in any form) shall remain with Ellie Mae and/or its licensors, both during the term of and after any expiration or termination of this Agreement. Customer acknowledges that Ellie Mae and/or its licensors have patent, copyright, trademark, trade secret and other intellectual property rights in the Software under United States and other foreign patent, copyright, trademark, trade secret and other intellectual property laws and international treaties, and that all such patent, copyright, trademark, trade secret and other intellectual property rights

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remain the exclusive property of Ellie Mae and/or its licensors at all times. Customer shall not alter or remove any copyright or other proprietary notices on or in the Software or any other materials provided pursuant to this Agreement. Customer expressly agrees not to attempt, or permit any third party, to modify or tamper with the normal function of any license manager or similar function in the Software that regulates usage or copying of the Software, including the license manager used with the SDK. Ellie Mae shall have the right to monitor usage of the Software under this Agreement to verify Customer's compliance with the above limitations on number of End-Users, and with the restrictions set forth in this Agreement, as well as for monitoring transactions for Ellie Mae's internal business purposes. Ellie Mae reserves all rights in the Software not expressly granted to Customer in this Agreement.

**1.2.4 Customer Materials.** In order to access and use the Software and Service and as otherwise set forth herein, Customer will, from time to time, provide information about itself, its business, its customers or its employees to Ellie Mae or its partners or affiliates. Any and all information submitted by Customer to Ellie Mae, including any information input by Customer into the interface of the Software or provided to Ellie Mae in the course of obtaining any Service hereunder (the "Customer Data") shall remain the property of Customer. Customer hereby grants to Ellie Mae a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license to reproduce, modify, adapt, translate, publish, perform, publicly display and distribute the Customer Data in order to (a) provide the products and Services hereunder and perform the additional functions set forth herein, (b) offer or prepare to offer additional products or services to Customer or customers thereof and (c) comply with applicable law or any governmental investigation. Customer represents and warrants that (i) it has all rights in the Customer Data necessary to provide the Customer Data for these purposes and that (ii) it has obtained any consents required by law in order for Customer to share Customer Data (including any information about borrowers contained therein) with Ellie Mae.

**1.3. Restrictions.** Customer shall have no right to obtain a copy of the Software source code or access or use the Encompass360 Software other than as set forth in this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CUSTOMER AGREES THAT IT SHALL NOT, IN WHOLE OR IN PART, AT ANY TIME DURING THE TERM OF OR AFTER ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT: (a) SELL, ASSIGN, SUBLICENSE, LEASE, RENT, TIMESHARE, GRANT A SECURITY INTEREST IN, DISTRIBUTE OR OTHERWISE TRANSFER THE SOFTWARE PROVIDED UNDER THIS AGREEMENT; (b) COPY OR REPRODUCE THE SOFTWARE; (c) POST, DISCLOSE OR HOST THE SOFTWARE FOR THE PURPOSES OF PROVIDING ACCESS OR DISTRIBUTING THE SOFTWARE TO ANY OTHER INDIVIDUAL OR ENTITY WITHOUT THE PRIOR WRITTEN CONSENT OF ELLIE MAE; (d) MODIFY, TRANSLATE, ADAPT, REVERSE ENGINEER, DECOMPILE, DISASSEMBLE OR OTHERWISE ATTEMPT TO DISCOVER ANY SOURCE CODE FOR, OR CREATE DERIVATIVE WORKS BASED ON, THE SOFTWARE, EXCEPT TO THE EXTENT SUCH ACTIVITIES ARE EXPRESSLY PERMITTED BY LAW NOTWITHSTANDING THIS PROHIBITION, OR MERGE THE SOFTWARE INTO ANY OTHER SOFTWARE; (e) ATTEMPT TO MODIFY OR TAMPER WITH THE NORMAL FUNCTION OF A LICENSE MANAGER OR SIMILAR FUNCTION IN THE SOFTWARE THAT REGULATES USAGE OF THE SOFTWARE; (f) USE THE SDK TO BUILD A REPLACEMENT OR ALTERNATIVE PRODUCT OR SERVICE TO ANY ELLIE MAE PRODUCTS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ENCOMPASS360™, ELLIE MAE DOCS, CLOSER, WEBCENTER, CENTERWISE™, ELECTRONIC DOCUMENT MANAGEMENT (EDM) OR ANY PRODUCTS OR SERVICES PROVIDED BY THIRD PARTY PROVIDERS THROUGH USE OF THE ELLIE MAE NETWORK SERVICES (DEFINED IN SECTION 1.8.1), UNLESS OTHERWISE APPROVED BY ELLIE MAE IN WRITING; OR (g) ALLOW ANY THIRD PARTY TO DO ANY OF THE ACTS DESCRIBED IN SECTIONS 1.3(a) THROUGH 1.3(f) HEREIN. FOR THE PURPOSE OF FURTHER CLARIFYING SECTION 1.3(f) HEREIN, YOU MAY ONLY USE THE SDK TO INTERFACE AND CONNECT WITH APPLICATIONS INTERNAL TO YOUR ORGANIZATION; YOU MAY NOT USE THE SDK TO TRANSFER DATA FROM YOUR ENCOMPASS SOFTWARE TO THIRD PARTY PROVIDER PRODUCTS AND SERVICES THEREBY BYPASSING THE USE OF ELLIE MAE'S ELLIE MAE NETWORK SERVICES AS DEFINED IN SECTION 1.8.1, UNLESS YOU RECEIVE ELLIE MAE'S PRIOR WRITTEN APPROVAL FOR SUCH USAGE.

Customer shall be solely responsible for obtaining any additional software and corresponding licenses that Customer may use in conjunction with the Service, including any Microsoft Office software products, and must satisfy all system requirements as may be necessary for Customer to access and use the Encompass360 Software.

**1.4. Modifications to the Service.** Ellie Mae reserves the right to modify the Service from time to time; *provided*, however, if a change to the Service has a material adverse effect on the functionality of the Service, Customer may terminate such Service without penalty (a) upon written notice of termination received by Ellie Mae on or prior to the thirty (30) days following effectiveness of such change or (b) if Ellie Mae fails to correct the adverse effect within ten (10) days after Ellie Mae receives Customer's written notice of such material adverse effect.

**1.5 Availability of the Service.** To the extent within Ellie Mae's control, Ellie Mae shall use its commercially reasonable efforts to provide access to the Service twenty-four (24) hours a day, seven (7) days a week during the term of this Agreement. Customer agrees that from time to time the Service may be inaccessible or inoperable for various reasons, including (a) equipment malfunctions, (b) periodic maintenance procedures or repairs which Ellie Mae may undertake from time to time or (c) causes beyond the reasonable control of Ellie Mae or which are not reasonably foreseeable by Ellie Mae, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "Downtime"). Ellie Mae generally performs routine system maintenance on all supporting systems between the hours of 12am and 6am PST/PDT on Sunday mornings ("Scheduled Downtime"). Scheduled Downtime may not be sufficient to provide updates to the Service. In the event that additional work needs to be performed outside of the Scheduled Downtime, Ellie Mae will use its commercially reasonable efforts to schedule planned downtime during non-peak hours for necessary updates and required maintenance to the Service. Ellie Mae shall use its commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Service in connection with Downtime, whether scheduled or not.

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1.6. Support. Ellie Mae will provide Customer with Support as referenced in the current Service Level Agreement, as may be amended from time to time ("SLA"), the current copy of which can be found at the following URL: <http://www.elliemae.com/legal/forms/ea%20sla.pdf>.

1.6.1. Support Exclusions. Support does not include, and Ellie Mae shall have no obligation to provide (a) on-site diagnosis at or travel to Customer's facilities, (b) re-creation of data or information lost for any reason other than that caused by Ellie Mae's gross negligence, or (c) any support or remedies for any loss arising from, related to or caused by Customer's negligence, abuse, misapplication or misuse of the Service. In addition to the foregoing, Ellie Mae shall not be responsible for any accidents, acts of nature, or any other causes beyond the reasonable control of Ellie Mae, including (i) failure of electronic or mechanical equipment or communication lines, (ii) telephone or other connectivity problems, (iii) bugs, errors, configuration problems or incompatibility of Customer's or any third party's computer hardware or software, (iv) failure or unavailability of Internet access, (v) problems with Internet service providers or other equipment or services relating to Customer's computers, (vi) problems with intermediate computer or communications networks or facilities, (vii) problems with data transmission facilities or Customer's telephones or telephone service, or (viii) unauthorized access, theft, operator errors, severe weather, earthquakes or labor disputes. Ellie Mae is not responsible for any damage to Customer's computers, software, modems, telephones or other property resulting from Customer's use of the Service unless caused by Ellie Mae's gross negligence. Notwithstanding the foregoing, Ellie Mae shall use commercially reasonable efforts to assist Customer in recovering lost data from regular backups when data loss occurs or is reported for any reason.

1.6.2 [Intentionally omitted.]

1.6.3 Security.

(a) If Customer accesses the Service from a computer, Customer agrees to use third party software that supports a data security protocol compatible with the protocol used by Ellie Mae. Until notified otherwise by Ellie Mae, Customer agrees to use software that supports the Secure Socket Layer protocol or other protocols accepted by Ellie Mae and to follow Ellie Mae's log-on procedures. Customer acknowledges that Ellie Mae is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software. If Customer accesses the Service from a device that does not support data security software or other security protocols, Customer acknowledges that the transmission of data while using the Service is not secure and may be accessed by unauthorized third parties and Customer assumes all risk and liability resulting therefrom.

(b) Customer shall be responsible for maintaining the security of Customer's data through the use of data encryption, data security protocols, passwords and other methods. Customer further agrees that Ellie Mae shall have no responsibility or liability for the deletion or failure to store any data transmitted by Customer or anyone else to Ellie Mae in connection with the Service, or any other damages, direct or indirect, resulting from loss or corruption of data unless otherwise expressly provided in writing.

1.7 Other Products and Services. From time to time, Ellie Mae may offer other products and services to Customer pursuant to this Agreement or pursuant to other agreements.

1.8 Other Features of Access to the Service and the Encompass360 Software.

1.8.1 THE ELLIE MAE NETWORK SERVICES. Included in the license to access the Encompass360 Software is the right to access third party services and products through the use of Ellie Mae's Ellie Mae Network (the "Ellie Mae Network Services"). The Ellie Mae Network Services are intended to enable transactions between Customer and third party providers of products and services within the mortgage industry ("Third Party Provider(s)"). Ellie Mae is not a party to or guarantor of performance with respect to any subsequent agreement between Customer and any Third Party Provider. Specifically, Ellie Mae does not control the quality or availability of goods and services accessed through the Ellie Mae Network Services, the terms and conditions under which those goods and services are offered or purchased, or the Third Party Providers' compliance with agreements that they may execute with Customer. Customer acknowledges and agrees that (a) Ellie Mae is serving only as a provider of electronic linkages between Customer and Third Party Providers; (b) Ellie Mae shall have no responsibility for the data or content transmitted between Customer and Third Party Providers; (c) the relationship between Customer and Third Party Providers shall be determined solely by Customer and such Third Party Providers only; and (d) Ellie Mae takes no responsibility and makes no representation or warranty of any kind concerning Customer's use of or the performance or results obtained by Customer or its customers by using such Third Party Providers and their services and products. Customer acknowledges and agrees that the inclusion of any link is not and does not imply an affiliation, sponsorship, endorsement, approval, investigation, verification or monitoring by Ellie Mae of any Third Party Provider or any information contained in such Third Party Provider's website. In no event will Ellie Mae be responsible for the information contained in such Third Party Provider's website or for Customer's use of or inability to use such website. Access to any other website is at Customer's own risk, and Customer should be aware that linked websites may contain terms and privacy policies that are different from those of Ellie Mae. Ellie Mae is not responsible for such provisions, and expressly disclaims any liability for them. Customer's use

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of the Ellie Mae Network Services may be subject to additional terms and conditions. All Ellie Mae Network Services are subject to change. Ellie Mae may at any time change or discontinue any aspect, availability or feature of the Encompass360 Software and the Ellie Mae Network Services. If and when Customer connects to the Internet and accesses the Ellie Mae Network Services, Ellie Mae may provide Customer with Encompass360 Software updates (i.e., software maintenance, service information, help content, etc.).

- 1.8.2 **RIGHT TO COLLECT AND TRANSMIT CERTAIN INFORMATION.** The Encompass360 Software automatically collects certain information about the loans processed through use of the Encompass360 Software. Ellie Mae agrees to keep such data secure and its use is subject to the Privacy Policy (as defined below). Customer understands that through use of the Encompass360 Software, Customer hereby consents to the collection and use (as set forth herein) of Customer Data. The Encompass360 Software also periodically screens data regarding various attributes of loans processed through use of the Encompass360 Software. This data is used for providing special offers. Customer can elect to block the Encompass360 Software from screening such information by going to the Settings section of the Encompass360 Software for the particular service in question and choosing to opt out of such service. If Customer makes this choice, Customer understands and agrees that Ellie Mae will not be able to inform you about any upcoming offers nor promotions regarding Customer's use of such particular service provided through the use of the Encompass360 Software. By choosing not to opt out of the service(s) found within the Encompass360 Software that screen such information, the Encompass360 Software may present special offers and/or enable Customer to purchase goods and services from Ellie Mae or Third Party Providers. You will be informed of such offers on screen (e.g., the Encompass360 Software may allow for the screening of loans in order to provide End-Users with lenders' programs that fit such loans). Should you decide to take advantage of an offer from a Third Party Provider or engage in a transaction, you can securely provide the Third Party Provider sponsoring the promotion or transaction with the relevant data (which may consist of non-public personal information ("NPPI") regarding the applicable loan), which transaction will be governed by the terms set forth in Section 1.8.1 above.
- 1.8.3 **ELLIE MAE'S PRIVACY POLICY.** By accepting the terms of this Agreement and using the Encompass360 Software, Customer agrees to be bound by Ellie Mae's Privacy Policy, which can be accessed at: [http://www.elliemae.com/legal/legal\\_clients.asp?elq=2de91406b7f14acfab1c58cfceaad8cf](http://www.elliemae.com/legal/legal_clients.asp?elq=2de91406b7f14acfab1c58cfceaad8cf), as may be amended from time to time (the "Privacy Policy").
- 1.8.4 **ELLIE MAE'S CENTERWISE PRODUCT.** In the event the current Order Form reflects the purchase of Ellie Mae's CenterWise™ product, Customer's right to access and use Ellie Mae's CenterWise™ product will be governed by the terms and conditions attached to this Agreement and incorporated by reference as Exhibit A.
- 1.8.5 **ENCOMPASS CLOSER.** In the event the current Order Form reflects the purchase of Ellie Mae's Encompass Closer product, Customer's right to access and use Ellie Mae's Encompass Closer product will be governed by the terms and conditions attached to this Agreement and incorporated by reference as Exhibit B.
- 1.8.6 **ENCOMPASS COMPLIANCE SERVICE.** In the event the current Order Form reflects the purchase of Ellie Mae's Encompass Compliance Service, Customer's right to access and use Ellie Mae's Encompass Compliance Service will be governed by the terms and conditions attached to this Agreement and incorporated by reference as Exhibit C.

## 2. FEES AND PAYMENTS.

2.1. **Service Fees.** Customer shall pay Ellie Mae the fees and charges for the Service to be provided hereunder (collectively, the "Service Fees") in accordance with the current Order Form. Unless otherwise expressly provided in the Order Form, the Service Fees applicable to any Renewal Term shall be at Ellie Mae's then-current standard rates.

2.2. **Payment; Late Fees.** Unless Customer signs up for automatic payments through use of an authorized credit card, as set forth on the current Order Form, Customer shall pay all Service Fees upon receipt of Ellie Mae's invoice and such Service Fees shall be overdue if not paid within thirty (30) days after the date of such invoice. Overdue accounts and any other fees and expenses not paid to Ellie Mae in accordance with this Agreement will be charged a late fee at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowed under applicable law if lower, commencing with the date payment was first past due. Should Customer be more than thirty (30) days past due on payments due Ellie Mae, Ellie Mae reserves the right to suspend or block Customer's access to the Service until such Service Fees and any interest charges are paid in full.

2.3. **Taxes.** The Service Fees and all other amounts payable to Ellie Mae hereunder are net amounts to be received by Ellie Mae, exclusive of all taxes (other than taxes based solely on Ellie Mae's income), duties and assessments and are not subject to offset or reduction because of any costs, expenses, taxes, duties, withholdings, assessments or liabilities incurred by Customer or imposed on Ellie Mae in the performance of this Agreement or otherwise due as a result of this Agreement. Customer shall be

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responsible for, and shall pay directly, any and all such taxes, duties, assessments and charges, including any sales and use taxes and shall indemnify and hold Ellie Mae harmless for same.

2.4 **Audit Rights.** During the term of this Agreement and for three (3) years thereafter, Customer agrees to maintain the pertinent records that relate to and support the payments due under this Agreement. Ellie Mae may cause an audit and/or inspection to be made of the applicable Customer records and facilities in order to verify Customer's compliance with the terms of this Agreement. Any such audit shall be conducted by an independent auditor selected by Ellie Mae. Any audit and/or inspection shall be conducted during regular business hours at Customer's facilities with reasonable notice. Customer agrees to provide Ellie Mae's designated audit or inspection team access to the relevant Customer records and facilities. Customer shall pay Ellie Mae the full amount of any underpayment revealed by the audit plus interest from the date such payments were due under the terms of this Article 2. Notwithstanding the foregoing, if such audit reveals an underpayment by Customer of more than five percent (5%) for the period covered by the report, Customer shall pay all of the fees and costs associated with such audit and the amount underpaid with interest equal to one and one half percent (1.5%) per month on the overdue balance, or the maximum amount allowed by applicable law (whichever is lower) from the date such payment was due. If Customer reasonably disputes the results of an Ellie Mae audit, it may conduct its own audit at its own expense.

### 3. PROPRIETARY RIGHTS.

3.1 **Trademarks.** Ellie Mae's trademarks, trade names, service marks, logos, other names and marks, and related product and service names, design marks and slogans (collectively, the "Ellie Mae Marks") are the sole and exclusive property of Ellie Mae. Customer agrees not to display or use any of the Ellie Mae Marks in any manner without Ellie Mae's express prior written consent.

#### 3.2. The Service.

(a) The Encompass360 Software and all content, organization, graphics, design, compilation, magnetic translation, digital conversion and all other aspects of the Service, and all documentation relating thereto, are the sole and exclusive property of Ellie Mae and/or its licensors and all right, title and interest in and to such property shall remain with Ellie Mae and/or its licensors, both during the term and after any expiration or termination of this Agreement. Customer acknowledges and agrees that Ellie Mae and/or its licensors have copyright, trade secret and other intellectual property rights in the Service and the documentation relating thereto, and that all such copyright, trade secret and other intellectual property rights remain the sole and exclusive property of Ellie Mae and/or its licensors at all times.

(b) CUSTOMER AGREES THAT IT SHALL NOT, IN WHOLE OR IN PART, AT ANY TIME DURING THE TERM OR AFTER ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT: (i) SELL, ASSIGN, SUBLICENSE, LEASE, RENT, TIMESHARE, GRANT A SECURITY INTEREST IN, DISTRIBUTE OR OTHERWISE TRANSFER USE OF THE SERVICE, OR ANY DOCUMENTATION RELATING THERETO; (ii) COPY, REPRODUCE, RETRANSMIT, DISSEMINATE, SELL, DISTRIBUTE, PUBLISH, BROADCAST, CIRCULATE, COMMERCIALY EXPLOIT OR CREATE DERIVATIVE WORKS BASED ON, THE SERVICE OR ANY SUCH DOCUMENTATION; OR (iii) PERMIT ANY PERSON OR ENTITY TO DO ANY OF THE FOREGOING.

3.3 **Confidentiality.** Customer agrees to treat the Service and all data or information related thereto or otherwise conveyed to Customer, whether orally, electronically or in writing, and the terms of this Agreement as the confidential and proprietary information of Ellie Mae. Customer shall: (a) use no less than reasonable care to protect the confidentiality of such data and information and shall not use such data and information other than as necessary for its performance of this Agreement; (b) not disclose any such data or information to any third party; and (c) return or destroy, at Ellie Mae's election, all such data and information upon termination or expiration of this Agreement. The obligations set forth in this Section 3.3 shall not apply to any data or information which Customer can show: (i) is or becomes publicly available without breach of this Agreement; (ii) that Customer has received from any third party in a legally permissible way without being bound by an obligation to preserve confidentiality; (iii) by means of written records that it already knew or has developed independently of disclosure under this Agreement; or (iv) that Ellie Mae otherwise authorizes in writing.

3.4 **Data Confidentiality.** Ellie Mae, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly divulge, disclose, or communicate any information that is proprietary to Customer. Ellie Mae and its employees, agents, and representatives will use no less than reasonable care to protect the confidentiality of such data and information and shall not use such data and information other than as necessary for its performance of this Agreement. The obligations set forth in this Section 3.4 shall not apply to any data or information which Ellie Mae can show: (a) is or becomes publicly available without breach of this Agreement; (b) that Ellie Mae has received from any third party in a legally permissible way without being bound by an obligation to preserve confidentiality; (c) by means of written records that it already knew or has developed independently of disclosure under this Agreement; or (d) that Customer otherwise authorizes in writing. Upon termination or expiration of this Agreement, Ellie will destroy any Customer data in its possession and certify in writing the destruction of such data. Notwithstanding the foregoing, Ellie Mae may disclose or preserve such information or terms: (i) on a confidential basis to legal or financial advisors; or (ii) pursuant to the order, proceeding or requirement of a court, administrative agency, or other governmental body.

### 4. WARRANTY AND DISCLAIMER OF WARRANTIES.

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4.1. Ellie Mae's Warranty.

4.1.1 For the Ellie Mae Service. Ellie Mae represents and warrants to Customer that during the term of the Agreement, the Service will be performed by Ellie Mae in a good and workmanlike manner consistent with industry standards reasonably applicable to the performance thereof and pursuant to the SLA. For any breach of the foregoing warranty, Customer must notify Ellie Mae in writing providing Ellie Mae with as much detail as possible, and Customer's sole and exclusive remedy, and Ellie Mae's sole and exclusive obligation, shall be that Ellie Mae will use its commercially reasonable efforts to repair or replace the Service.

4.1.2 For the Encompass360 Software. For a period of ninety (90) days after your acceptance of the Encompass360 Software License Agreement distributed with the Encompass360 Software, Ellie Mae represents and warrants that the Encompass360 Software will operate substantially in accordance with and conform to the Ellie Mae documentation for the Encompass360 Software. In the case of nonconforming Encompass360 Software, Ellie Mae's entire liability and Customer's exclusive remedy will be that Ellie Mae will, at its sole discretion, provide Customer with either corrections to the nonconforming Encompass360 Software or with replacement software that has substantially similar functionality. In the event neither corrections nor a replacement is commercially feasible, Customer will be entitled to receive a refund of Customer's Service Fee for such Encompass360 Software.

4.1.3 Additional warranties may be found in the attached Exhibits for the specific products or services provided under such Exhibits.

4.2. Customer's Compliance with Law. Customer represents and warrants to Ellie Mae that Customer's use of the Service provided by Ellie Mae, including in marketing Customer's products and services and in the origination and processing of loans, will comply with all applicable U.S. state and federal laws and regulations. Customer further represents and warrants that it will not use the Service for any unlawful purpose.

4.3. Both Parties' Warranties. Each party represents and warrants that (a) this Agreement has been duly authorized, executed and delivered, and constitutes a legal and binding agreement, enforceable in accordance with its terms, and (b) entry into and the performance under this Agreement is not now and will not be restricted or prohibited by any article of incorporation, partnership agreement, article of organization, charter, bylaw, operating agreement, judgment, decree, statute, rule, regulation, indenture, mortgage, contract or agreement of any kind applicable to it.

4.4. Disclaimer of Warranties. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES AS FOLLOWS:

(a) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTIONS 4.1 AND 4.3 ABOVE, AND EXCEPT FOR ANY ADDITIONAL WARRANTIES SET FORTH IN AN EXHIBIT INCORPORATED INTO THIS AGREEMENT BY REFERENCE AS THEY MAY PERTAIN TO A PARTICULAR ELLIE MAE PRODUCT OR SERVICE, ELLIE MAE EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ENCOMPASS360 SOFTWARE AND THE SERVICE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF ELLIE MAE HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF ELLIE MAE IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF ELLIE MAE AS EXPRESSLY SET FORTH HEREIN;

(b) ELLIE MAE MAKES NO WARRANTY THAT (i) THE ENCOMPASS360 SOFTWARE AND SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, (ii) THE ENCOMPASS360 SOFTWARE AND SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE ENCOMPASS360 SOFTWARE AND SERVICE WILL BE ACCURATE OR RELIABLE OR (iv) ANY ERRORS IN THE ENCOMPASS360 SOFTWARE AND SERVICE WILL BE CORRECTED; AND

(c) NO ACCOUNTING, FINANCIAL, LEGAL OR TAX ADVICE OR COUNSEL IS GIVEN, OR SHALL BE DEEMED TO HAVE BEEN GIVEN, BY THE USE OF THE SERVICE.

5. LIMITATION OF LIABILITY.

5.1. EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL ELLIE MAE OR ITS LICENSORS OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, REVENUE, GOODWILL, DATA OR USE, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION), OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES INCURRED BY CUSTOMER OR ANY THIRD PARTY IN ANY WAY RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICE OR THE PERFORMANCE OR NON-PERFORMANCE OF THE ENCOMPASS360 SOFTWARE AND/OR THE SERVICE, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF ELLIE MAE HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

5.2. LIMITATION OF LIABILITY. UNLESS OTHERWISE EXPRESSLY PROVIDED IN AN EXHIBIT TO THIS AGREEMENT, IN NO EVENT SHALL ELLIE MAE'S AGGREGATE LIABILITY FOR ALL DAMAGES TO CUSTOMER AND ANY THIRD PARTIES EXCEED THE AMOUNT OF CUSTOMER'S INITIALS HERE:

SERVICE FEES PAID HEREUNDER BY CUSTOMER TO ELLIE MAE DURING THE THREE (3) MONTHS PRECEDING THE DATE THAT THE CAUSE OF ACTION AROSE.

5.3. **APPLICABILITY OF LIMITATIONS.** THE LIMITATIONS CONTAINED IN THIS SECTION 5 SHALL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, WHETHER BASED IN CONTRACT, WARRANTY, TORT OR ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY).

## 6. INDEMNIFICATION.

6.1 **Ellie Mae Indemnification.** Ellie Mae shall defend, indemnify and hold harmless Customer from and against all claims, losses, causes of action, liability, damages, costs and expenses (including reasonable attorneys' fees, costs and expenses) relating to, arising from, or in connection with infringement of any U.S. patent, copyright, or trademark, or any third party's rights caused by the use of the Service; provided that, Customer promptly notifies Ellie Mae of such claims, permits Ellie Mae to control the defense of such claims, and provides Ellie Mae all reasonably available information and assistance at Ellie Mae's expense. The obligations set forth in this Article 6 shall survive any expiration or termination of this Agreement.

6.2 **Customer Indemnification.** Customer shall defend, indemnify and hold harmless Ellie Mae, its officers, directors, employees, shareholders, agents and representatives, from and against all claims, losses, causes of action, liability, damages, costs and expenses (including reasonable attorneys' fees, costs and expenses) relating to, arising from, or in connection with: (a) Customer's breach or violation of this Agreement, including any representation or warranty herein; (b) Customer's breach or violation of state or federal banking, lending or securities laws and regulations; (c) Customer's use of Third Party Providers and their products and services; (d) the collection, use, or distribution of information or data provided to Third Party Providers or collected from third party borrowers; (e) Customer's violation of any third party's rights, including infringement of any copyright, violation of any proprietary right or invasion of any privacy rights; provided that, Ellie Mae promptly notifies Customer of such claims, permits Customer to control the defense of such claims, and provides Customer all reasonably available information and assistance at Customer's expense. The obligations set forth in this Article 6 shall survive any expiration or termination of this Agreement.

6.3 Should the Encompass360 Software become, or in Ellie Mae's reasonable opinion, be likely to become the subject of a claim of infringement of a U.S. patent, trade secret or copyright, Ellie Mae shall have the option, at its expense, to do one of the following: (a) procure for Customer the right to continue to use the Encompass360 Software; (b) replace or modify the alleged infringing Encompass360 Software to make it non-infringing, provided that the same functions are performed by the replacement or modified Encompass360 Software; or (c) if (a) or (b) above are not commercially reasonable, Ellie Mae may terminate the license to use such Encompass360 Software by providing Customer not less than twenty (20) business days' written notice and Ellie Mae will refund to Customer an amount equal to the pro-rata portion of the Service Fees due and paid by Customer for the then current term of this Agreement for the remainder of such term as of the effective date of termination and, if the then current term is the Initial Term, Ellie Mae will also refund to Customer an amount equal to the pro rata portion of any implementation fees for the remainder of the Initial Term as of the effective date of termination, provided that Customer purges all copies of the Encompass360 Software and related materials from all computer systems on which it was stored and returns to Ellie Mae all physical copies of the Encompass360 Software and related materials in accordance with Section 7.3(c) hereof. THE FOREGOING SETS FORTH ELLIE MAE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT BY THE PRODUCTS THAT ARE THE SUBJECT OF THIS AGREEMENT, OR ANY PART THEREOF.

## 7. TERM AND TERMINATION.

7.1. **Term.** The initial term of this Agreement shall be for the period indicated on the Order Form, commencing on the Effective Date ("Initial Term"). Thereafter, the term of this Agreement shall automatically renew for successive terms of one (1) year each (each a "Renewal Term") at Ellie Mae's then-current pricing for maintenance, which Ellie Mae will provide to Customer at least sixty (60) days prior to the expiration of the then-current term. Customer acknowledges and agrees that even though it will have a perpetual license to the Encompass360 Software upon payment in full of the Service Fees for the use of the Encompass360 Software, Customer must be current on its maintenance fees under this Agreement in order to maintain access to the Ellie Mae Network and to all the services provided thereunder, including, but not limited to, products and services of Third Party Providers, as set forth in Section 1.8.1 herein.

### 7.2. Termination.

(a) **Termination for Breach.** Either party may terminate this Agreement effective upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days (fifteen (15) days in the case of any nonpayment of money) after written notice of the same.

(b) **Termination for Insolvency.** Either party may terminate this Agreement immediately upon notice if the other party: (i) becomes insolvent; (ii) makes a general assignment for the benefit of creditors; (iii) becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (iv) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; or (v) is liquidated, voluntarily or otherwise.

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(c) Termination for Convenience by Customer. Customer may terminate this Agreement in whole at any time for convenience upon ninety (90) days' written notice to Ellie Mae, subject to the payment obligations, if any, set forth in the Order Form.

(d) Termination Due to Actual or Anticipated Infringement. Ellie Mae may terminate this Agreement as set forth in Section 6.3.

(e) In case of termination of this Agreement for any reason other than Ellie Mae's breach or due to Ellie Mae's election as set forth in Section 6.3, Customer shall remain obligated to pay all applicable Service Fees and other charges for the remainder of the Initial Term or a cancellation fee as determined by the parties in writing.

### 7.3. Effects of Termination.

(a) Notwithstanding any expiration or termination of this Agreement, the provisions of Sections 1.2.3 ("Ownership of Ellie Mae Software, Products and Services Provided Through Use of the Service"), 1.3 ("Restrictions"), 2 ("Fees and Payments"), 3 ("Proprietary Rights"), 4.2 ("Customer's Compliance with Law"), 4.4 ("Disclaimer of Warranties"), 5 ("Limitation of Liability"), 6 ("Indemnification"), 7.3 ("Effects of Termination"), 8 ("General Provisions") and all confidentiality provisions set forth elsewhere in this Agreement shall continue in full force and effect.

(b) Except as may otherwise be set forth in this Agreement, upon termination or expiration of this Agreement, Ellie Mae may destroy any Customer data in its possession, unless Customer notifies Ellie Mae in writing within ninety (90) days from the effective date of termination or expiration to return such data to Customer and Ellie Mae will provide Customer a Statement of Work ("SOW") setting forth the fees required by Ellie Mae in order to prepare such data and a non-exclusive, non-transferable, limited, single use license to the Encompass360 Software for the sole purpose of accessing such data for Customer's reporting and compliance purposes.

(c) Notwithstanding anything set forth in this Agreement, Customer acknowledges and agrees that all licenses granted herein, including any perpetual licenses, shall become null and void upon the termination of this Agreement. Following such termination of this Agreement, Customer shall return to Ellie Mae any and all software program documentation or any other materials, copies or reproductions of the foregoing, relating to the Software, the SDK and the Services, and any upgrade(s), update(s) and enhancements thereto. Furthermore, upon termination of this Agreement, Customer shall promptly, and in any event within 30 days following termination, return to Ellie Mae all other property and Confidential Information belonging to Ellie Mae, in all forms, partial and complete, in all types of media and computer memory, and whether or not merged with other materials, or to the extent such return is not reasonably practical, will destroy the foregoing and provide Ellie Mae with a certificate executed by an officer of Customer certifying such destruction.

(d) Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its terms; provided, however, Customer will be liable to Ellie Mae for the Service Fees for the remainder of the Initial Term or for a cancellation fee, as set forth in Section 7.2(c) above, if applicable.

## 8. GENERAL PROVISIONS.

8.1. Independent Contractor. Each of the parties to this Agreement is an independent contractor and shall not be considered or deemed to be an agent, employee, joint venture, or partner of the other party. Neither party shall have, or shall hold itself out as having, any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the other party or shall act in a manner which expresses or implies a relationship other than that of independent contractor.

8.2. Entire Agreement. This Agreement sets forth the entire understanding and supersedes all prior and contemporaneous agreements between the parties relating to the subject matter contained herein and merges all prior and contemporaneous discussions, agreements and understandings, both verbal and written, between them regarding such subject matter. Except as otherwise provided herein, no modifications, additions, or amendments to this Agreement shall be effective unless set forth in a writing referencing this Agreement and signed by a duly authorized representative of the party to be bound thereby. All provisions of this Agreement shall govern over any conflicting terms and conditions of any purchase orders, invoices or other instruments, including shrinkwrap or clickwrap agreements, which may be issued by either party, unless otherwise agreed by both parties in writing. Notwithstanding the foregoing, in the event there is any conflict between the terms within the body of this Agreement and any agreements, Exhibits, addenda or amendments attached hereto and incorporated herein, the terms in such agreements, Exhibits, addenda or amendments shall govern unless they expressly state otherwise.

8.3. Publicity. Customer hereby consents to Ellie Mae's reference to Customer by name in any promotional or marketing material and in any Ellie Mae customer list, including on Ellie Mae's website and including any Customer trademark(s) or trade name(s), without the prior approval of Customer, but provided that Ellie Mae will comply with Customer's reasonable guidelines for trademark usage when disclosed to Ellie Mae in writing. Customer agrees that it shall not issue any press releases or make public statements concerning the existence or terms of this Agreement or include or use Ellie Mae's name or trademarks in any promotional or marketing material without Ellie Mae's prior written approval.

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**8.4. Notices.** Every notice or other communication required or contemplated by this Agreement shall be in writing and shall be deemed received and effective (a) on the date of personal delivery, (b) on the date it is officially recorded as delivered to the intended recipient when sent by postage prepaid, return receipt requested, registered or certified mail (airmail if available), or the equivalent of registered or certified mail under the laws of the country where mailed, or in the absence of such record of delivery, the effective date shall be deemed to be the fifth (5th) business day after it was deposited in the mail, (c) on the date it is officially recorded as delivered to the intended recipient when sent by internationally recognized overnight courier, such as Federal Express, DHL or UPS, or in the absence of such record of delivery, the effective date shall be deemed to be the third (3rd) business day after delivery to such courier, or (d) the date transmitted by facsimile with a confirmation copy sent simultaneously by one of the other methods permitted under this Section 8.4, in each case addressed to the addresses specified in the Introduction to this Agreement or on the current Order Form. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given.

**8.5. Governing Law.** The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of California applicable to agreements negotiated, executed and performed in California between California corporations without regard to its conflicts of laws rules, regardless of whether one or more of the parties shall now be or hereafter become a resident of another state or country. The United Nations' Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Each party to this Agreement hereby consents to the jurisdiction and venue of the U.S. federal and California state courts located in San Francisco, California.

**8.6. No Waiver of Rights.** All waivers hereunder must be made in writing, and failure at any time to require the other party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of the provision.

**8.7. Dispute Resolution and Arbitration.** Other than claims for injunctive relief, any and all disputes relating to or arising in connection with this Agreement shall be resolved exclusively by binding arbitration. In such case, both parties agree to the appointment of three (3) arbitrators, with one arbitrator selected by each party, and the third selected by the American Arbitration Association ("AAA"). The arbitration shall be conducted in San Francisco, California in accordance with the commercial arbitration rules, regulations and procedures of the AAA, and the decision of the arbitration panel shall be final and binding on both parties. Judgment on the arbitrators' award may be entered by any court having jurisdiction. Each party to this Agreement hereby consents to the jurisdiction and venue of the U.S. federal and California state courts located in San Francisco, California for such purposes.

**8.8. Attorneys' Fees.** If any action or proceeding shall be commenced to enforce or interpret this Agreement or any right arising in connection with this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party all reasonable attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding and any negotiations to avoid such action or proceeding.

**8.9. Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement is determined by a court of applicable jurisdiction to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

**8.10. Assignment.** Except as otherwise expressly provided hereunder, neither this Agreement nor any rights or obligations hereunder may be assigned in whole or in part by either party without the prior written consent of the other party, except that the rights and obligations of Ellie Mae may be transferred or assigned to another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of its voting securities and/or assets. Any assignment in violation of the above shall be null and void. Subject to the limitations of the foregoing, this Agreement shall be binding on, and shall inure to the benefit of, the parties and their respective successors and assigns.

**8.11. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute only one and the same instrument. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

**8.12. Construction.** The subject headings of the Sections and other subdivisions of this Agreement are included for the purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions. As used in this Agreement, the word "including" shall mean "including without limitation."

**8.13. Export Restrictions.** Customer agrees not to export (including transferring electronically over any network, including the Internet) or re-export the Software, any part thereof, or any process or service that is the direct product of the Software, to any country, person, or entity in violation of U.S. and other applicable export laws, including the Export Administration Regulations administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations administered by the U.S. Department of State.

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8.14 U.S. Government Restricted Rights. The Software is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government and parties acting on its behalf is subject to the restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and in subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable.

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**EXHIBIT A**  
**TERMS AND CONDITIONS FOR THE ENCOMPASS CENTERWISE PRODUCT**

The following additional terms shall apply to the use of Ellie Mae's Encompass CenterWise product, which is included as an option to the Encompass360 Software licensed under this Agreement, to the extent that such right to use is purchased by Customer in accordance with, and at the fees set forth in, the Order Form:

**Article I: Definitions**

Unless otherwise provided within this Exhibit, all terms used herein shall have the meanings set forth in the Agreement.

**Article II: The Encompass CenterWise Product**

**2.1 Hosting Services; License to Customer.**

(a) Subject to the terms and conditions of this Exhibit A, during the term of the Agreement, Ellie Mae grants a non-exclusive, non-transferable, limited license to those End-Users who access and use the WebCenter Administration tool within the Encompass360 Software ("Active Users") the right to use such WebCenter Administration tool, including the use of any Ellie Mae Content (defined below) contained therein for: (i) developing and customizing websites that Ellie Mae will host through Customer's use of the Service; (ii) marketing Customer's products and services to its customers; and (iii) Customer's internal business purposes in performing loan origination and loan processing services for Customer's customers and their lenders. For purposes of this Exhibit, "Ellie Mae Content" means any materials provided by Ellie Mae for incorporation in a Customer website, including text, script, programming code, data, HTML code, images, illustrations, graphics, and/or multimedia files. Customer is solely responsible for the creation of the content for its website(s) using the tools supplied by Ellie Mae through access to the WebCenter features of the CenterWise product. Following completion of the customization and configuration of Customer's website(s), Ellie Mae shall host such website(s) during the term of the Agreement by providing an environment to store the website(s) and make the website(s) available on demand by users of the Internet in accordance with the terms of this Exhibit and the Agreement.

(b) Subject to the terms and conditions of this the Agreement and this Exhibit A, during the term of the Agreement, Ellie Mae grants such Active Users a non-exclusive, non-transferable, limited license to use the EDM feature of the CenterWise product for managing and storing their loan documents in and for use with the Encompass360 Software. As one of the features of the EDM portion of the CenterWise product, upon Customer's request, Ellie Mae agrees to archive Customer's loan documents for a period of up to seven (7) years.

(c) Subject to the terms and conditions of the Agreement and this Exhibit A, during the term of the Agreement, Ellie Mae grants such Active Users a non-exclusive, non-transferable, limited license to the Initial Disclosures provided with the CenterWise product, which disclosures are subject to additional terms and conditions as set forth in this Exhibit A. "Initial Disclosures" means the set of loan documents prepared using the Encompass360 Software, consisting of the Initial federal Truth-in-Lending Disclosure Statement, Good Faith Estimate of Closing Costs, Initial Transfer of Servicing Disclosure, and other disclosures applicable to originators which are required by federal law and applicable state law to be delivered to loan applicants within three (3) business days after receipt by a creditor of a residential mortgage loan application, excluding, however, all loan processing forms such as, by way of illustration and not limitation, adverse action notices, lock-in agreements, commitment letters, loan terms agreement or disclosures related to such forms.

(d) CUSTOMER ACKNOWLEDGES AND AGREES THAT (I) ITS USE OF SUCH INITIAL DISCLOSURES IS AT ITS OWN RISK, (II) THE INITIAL DISCLOSURES ARE PROVIDED "AS-IS" WITHOUT A WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, (III) ELLIE MAE WILL NOT BE LIABLE FOR ANY ERRORS OR DAMAGES CAUSED BY THE USE OF SUCH INITIAL DISCLOSURES, AND (IV) THE INITIAL DISCLOSURES ARE PROVIDED BY ELLIE MAE TO CUSTOMER AS A CONVENIENCE ONLY AND ARE NOT SUBJECT TO ANY OF THE OTHER WARRANTIES, NOR COVERED UNDER ANY OF THE INDEMNIFICATION PROVISIONS SET FORTH ELSEWHERE IN THE AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE WARRANTY PROVISIONS IN SECTION 4.1 AND THE INDEMNIFICATION PROVISIONS IN SECTIONS 6.1 AND 6.3 OF THE AGREEMENT SHALL NOT APPLY TO INITIAL DISCLOSURES.

**2.2 Restrictions.** Customer shall be solely responsible for obtaining any additional software (other than server operating system software provided by Ellie Mae) and corresponding licenses that Customer may use, including any Microsoft Office software products, and must satisfy all system requirements as necessary to permit Customer to access and use the CenterWise product.

**Article III: Licenses To Ellie Mae**

Subject to the terms and conditions of this Exhibit A and the Agreement, during the term of the Agreement, Customer grants to Ellie Mae a limited, non-exclusive, non-transferable, royalty-free license to exhibit, publish, transmit, copy, produce, display, perform, and use the Customer Content and the Customer Branding Materials, solely in connection with Customer's website(s) and/or Ellie Mae's performance of its obligations under this Agreement. For purposes of this Exhibit, "Customer Content" means all materials that Customer incorporates into its website(s) that is (are) hosted by Ellie Mae through the WebCenter feature of the CenterWise product, including text, trademarks or service marks, images, illustrations, graphics and/or multimedia files, and "Customer Branding Materials" means all materials for use in branding its website(s), including all text and images of Customer's trademarks and CUSTOMER'S INITIALS HERE: EL

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service marks that Customer incorporates into its website(s) that is (are) hosted by Ellie Mae through the WebCenter feature of the CenterWise product.

#### Article IV: Customer's Warranties

**4.1 Customer Content and Customer Branding Materials.** Customer represents and warrants to Ellie Mae (a) that the Customer Content and any Customer Branding Materials do not infringe or violate the rights of any third party, including any copyright, trademark, service mark or other intellectual property rights; (b) that the Customer Content and any Customer Branding Materials are not defamatory or obscene and do not violate any right of privacy or publicity; and (c) that Customer has sufficient power and authority to provide to Ellie Mae, and to authorize Ellie Mae's use of, the Customer Content and the Customer Branding Materials.

**4.2 Compliance with Law.** Customer represents and warrants to Ellie Mae that Customer's use of the Service provided by Ellie Mae, including in marketing Customer's products and services and in the origination and processing of loans, will comply with all applicable U.S. state and federal laws and regulations. Customer is solely responsible for ensuring that its website(s) and Customer's use of the Service comply with all applicable state and federal laws and regulations, and Customer agrees to provide Ellie Mae with any necessary additions, deletions and modifications to its website(s) in order to comply with such laws and regulations. Customer further represents and warrants that it will not use the Service for any unlawful purpose.

#### Article V: Prohibited Uses

Customer may not:

**5.1 Utilize the CenterWise product in connection with any illegal activity.** Without limiting the generality of this rule, Customer may not: (a) utilize the CenterWise product to upload, post, reproduce or distribute any information, software or other material (including text, graphics, music, videos or other copyrightable material) protected by copyright or any other intellectual property right (as well as rights of publicity and privacy) without first obtaining the written authorization of the owner of such rights; (b) utilize the CenterWise product in any way to express or imply that any opinions contained in Customer's electronic communications, including but not limited to its website(s), are endorsed by Ellie Mae; (c) utilize the CenterWise product to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party; (d) utilize the CenterWise product to traffic in illegal drugs, illegal gambling, obscene materials or any other products or services that are prohibited under applicable law; or (e) utilize the CenterWise product in any manner that violates applicable laws or regulations, including any laws or regulations applicable to the use of any Ellie Mae products or services in marketing Customer's products and services and in the origination and processing of loans.

**5.2 Utilize the CenterWise product in connection with any tortious or actionable activity.** Without limiting the generality of this rule, Customer may not: (a) utilize the CenterWise product to publish or disseminate information that (i) constitutes slander, libel or defamation, (ii) publicizes the personal information or likeness of a person without that person's consent or (iii) otherwise violates the privacy rights of any person; or (b) utilize the CenterWise product to threaten persons with bodily harm, to make harassing or abusive statements or messages, or to solicit the performance of acts or services that violate applicable laws or regulations.

**5.3 Utilize the CenterWise product in connection with any other disruptive or abusive activity.** Without limiting the generality of this rule, Customer may not: (a) post messages or software programs that consume excessive CPU time or storage space; or (b) utilize the CenterWise product to, or in any manner that could (i) cause denial of service attacks against Ellie Mae or other network hosts or Internet users or to otherwise degrade or impair the operation of Ellie Mae's servers and facilities or the servers and facilities of other network hosts or Internet users; (ii) resell access to Common Gateway Interface scripts installed on Ellie Mae's servers; (iii) subvert, or assist others in subverting, the security or integrity of any Ellie Mae systems, facilities or equipment; (iv) gain unauthorized access to the computer networks of Ellie Mae or any other person; (v) provide passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code; (vi) distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment, or disrupt the operation of the CenterWise product; (vii) conduct port scans or other invasive procedures against any server (except any server for which Customer is an authorized system administrator); (viii) distribute, advertise or promote software or services that have the primary purpose of encouraging or facilitating unsolicited commercial e-mail or spam; (ix) solicit or collect, or distribute, advertise or promote, e-mail address lists for the purpose of encouraging or facilitating unsolicited commercial e-mail or spam; (x) subject Ellie Mae to unfavorable regulatory action, subject Ellie Mae to any liability for any reason, or adversely affect Ellie Mae's public image, reputation or goodwill, including, without limitation, sending or distributing sexually explicit, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by Ellie Mae in its sole discretion; or (xi) interrupt or interfere with the Internet usage of other persons.

#### Article VI: Violations

**6.1 Disclaimer.** Ellie Mae expressly disclaims any obligation to monitor its customers and other users with respect to violations of Article V herein. Ellie Mae has no liability or responsibility for the actions of any of its customers or other users or any content any user may post on any website.

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**6.2 Reporting Copyright Violations.** Ellie Mae complies with the Digital Millennium Copyright Act ("DMCA"). Ellie Mae encourages all of its users to report an alleged copyright infringement involving a user by sending a notice that complies with the DMCA to: DMCA Notices, Attention: Legal Department, Ellie Mae, Inc., 4155 Hopyard Road, Suite 200, Pleasanton, CA 94588.

**Article VII: Reservation of Rights; Remedies.** Ellie Mae reserves the right to cooperate with appropriate legal authorities in investigations of claims of illegal activity involving Ellie Mae's products and services, Customer and other users. Ellie Mae reserves all other rights to respond to violations of Article V to the fullest extent permitted under applicable law and/or in accordance with the Agreement. In the event of any breach, or reasonably anticipated breach, by Customer of Article V, any of the representations and warranties set forth in Article IV, or any other provision of this Agreement, in addition to any other remedies available at law or in equity or pursuant to the Agreement, Ellie Mae will have the right, in Ellie Mae's sole discretion, to immediately take any of the following actions (a) warning Customer, (b) suspending Customer from the use of the WebCenter feature or use of the Service, (c) terminating Customer from the use of the WebCenter feature or the use of the Services, (d) removing the offending content and/or (e) suspend immediately Customer's further access to the Service.

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**EXHIBIT B**  
**TERMS AND CONDITIONS FOR ENCOMPASS CLOSER**

The following terms shall apply to the use of Ellie Mae's Encompass Closer product, which is included as an option to the Encompass360 Software licensed under this Agreement, to the extent that such right to use is purchased by Customer in accordance with, and at the fees set forth in, the Order Form:

**Article I: Definitions**

Unless otherwise provided within this Exhibit, all terms used herein shall have the meanings set forth in the Agreement.

- 1.1 "Closing Documents Package" shall mean the set of Loan Documents prepared by Customer using the Software to document the closing of a residential mortgage loan transaction including, but not limited to, promissory notes, mortgages, deeds of trust and any disclosures required by federal or state law to be delivered to borrowers at the time of loan closing.
- 1.2 "Custom Form" shall mean a document for which Ellie Mae has created a Programmed Form at the request of Customer and which document is not a Standard Form.
- 1.3 "Loan Documents" shall mean those documents prepared by Customer utilizing the Software and the Programmed Forms.
- 1.4 "Loan Programs" shall mean the various residential mortgage loan products offered by Customer which products are differentiated by category, including, without limitation, size of loan (e.g., conforming, jumbo), Investor (e.g., Fannie Mae, Freddie Mac, GNMA, private investor), insurer or guarantor (e.g., FHA, VA), and lien priority (e.g., first lien, junior lien), etc; *provided, however*, Loan Programs shall not include loan types or programs not supported by Ellie Mae's Software, including, but not limited to housing finance authority loans, construction loans, co-op loans or so-called "predatory" or high cost loans, reverse annuity loans, pledged asset account loans, mobile home loans, shared appreciation mortgages, loans to trusts or other entities other than natural persons, or loans under \$5,000 unless otherwise agreed to in writing.
- 1.5 "Programmed Forms" shall mean the computerized form of the documents created by Ellie Mae and programmed in the Software and consisting of (a) those programmed loan forms created by Ellie Mae from Standard Forms and (b) those programmed loan forms created by Ellie Mae for Customer from Custom Forms.
- 1.6 "Redraw" shall mean a revised version of a set of Loan Documents prepared for the same transaction as the original Loan Documents and which is drawn within thirty (30) days of the original set of Loan Documents.
- 1.7 "Remote Location" shall mean a location other than Customer's office to which Customer has instructed that Ellie Mae make available a set of Loan Documents.
- 1.8 "Rules" shall mean the computer logic utilized by the Software to select Programmed Forms appropriate for a specific transaction as described in Section 2.2.
- 1.9 "Software" shall mean the Encompass360® Software licensed to Customer pursuant to this Agreement.
- 1.10 "Software Documentation" shall mean any manuals, training materials, guides and performance standards or other written or printed technical or explanatory material in tangible medium or in digital electronic form provided, or otherwise made available, to Customer by Ellie Mae from time to time regarding the Software.
- 1.11 "Standard Forms" shall mean Ellie Mae's standard set of mortgage loan documents for which Ellie Mae has created Programmed Forms including, but not limited to, Fannie Mae, Freddie Mac, FHA, VA and other form documents in the public domain, as well as form documents to the extent that the format and content are specified by federal or state law, but not including specific forms requested, required or supplied by, investors other than Fannie Mae or Freddie Mac. Except as set forth in the preceding sentence, no form in any language other than English shall be deemed a Standard Form. A form shall not be deemed a Standard Form unless it is available for and is in general use in its unmodified form by Ellie Mae customers. Without limiting the generality of the foregoing, any form which bears a form name or designation in the document footer which begins with the letter "L" or "I" shall in no event be deemed a Standard Form.
- 1.12 "System Requirements" shall mean the computer hardware equipment and operating system software necessary to utilize the Software, as identified in the Software Documentation, and as may be modified by Ellie Mae from time to time upon reasonable notice.
- 1.13 "Updates" shall mean upgrades, modifications, or updates by Ellie Mae to existing Software, including Programmed Forms, or Software Documentation, or new features or functions developed for existing Software based on changes in statutory or regulatory requirements.

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**Article II: Documentation Services Provided by Ellie Mae**

- 2.1 Programmed Forms.** Except as set forth in Section 2.5 hereof, Ellie Mae shall create and maintain all Programmed Forms necessary for Customer to prepare the appropriate Loan Documents for each Loan Program. All Programmed Forms shall be in the English language unless otherwise agreed in writing.
- 2.2 Rules.** Ellie Mae shall program Rules within the Software to ensure that the appropriate Loan Documents are prepared by Customer for each of its Loan Programs and printed in the appropriate Closing Documents Packages. Such Rules shall be changed from time to time by Ellie Mae to accommodate changes in Loan Programs, government-sponsored enterprise ("GSE") (e.g., Fannie Mae and Freddie Mac) loan origination guidelines and relevant federal and state statutes and rules.
- 2.3 Loan Document Production.** Upon receipt of a set of data for a specific loan properly transmitted from Customer, Ellie Mae shall process the data and provide data back to Customer. Upon Customer's receipt of the processed data, the Software will merge the data with the appropriate Programmed Forms in accordance with the Rules and begin to deliver completed Loan Documents to Customer's designated laser printer and/or Remote Locations. Customer specifically acknowledges that it has, pursuant to the Rules, determined the applicable mortgage, deed of trust, promissory note and loan agreement, if any, that will be used for each Loan Program offered by Customer. Following Customer's review of the Loan Documents, Customer will utilize the Software to modify the Loan Documents.
- 2.4 Maintenance of Standard Forms.** Ellie Mae shall use commercially reasonable efforts to monitor any changes in federal GSE loan origination guidelines and pertinent federal and state statutes and regulations as, and to the extent, the same pertain to the form and content of the Standard Forms for the Loan Programs. Ellie Mae shall use commercially reasonable efforts to modify existing Standard Forms or create new Standard Forms to satisfy such changes in pertinent federal and state statutes and regulations.
- 2.5 Custom Forms; Warranty.** At the request of Customer and if required by Customer, Ellie Mae may create and maintain Custom Forms subject to the terms and conditions set forth herein at Ellie Mae's then-current fees. Custom Forms may be in addition to or in substitution of any Standard Forms. For any Standard Form that is provided or required by a government agency or a GSE, but which becomes obsolete or otherwise no longer supported by such government agency or GSE, Customer's request for continued use of such form shall be deemed a Custom Form. Customer shall have sole responsibility for the form, content and legal sufficiency of all of its Custom Forms. Ellie Mae's duty shall be strictly limited to produce Customer's Custom Forms in accordance with mutually agreed upon written specifications; and when produced by the Software, Ellie Mae warrants for the period of time set forth in Section 3.2 herein, that such Custom Forms shall be in accordance with the agreed upon written specifications. All Custom Forms shall be reviewed and approved by Customer prior to being used to ensure that they meet with Customer's specifications. Notwithstanding anything herein or in the Agreement stated to the contrary, Customer's use of such Custom Forms shall be deemed Customer's acceptance of such Custom Forms. Customer assumes all responsibility and will indemnify Ellie Mae in connection with any claim of infringement, misappropriation, or misuse of trademarks, service marks, copyrights, patent rights, trade secrets, other intellectual property rights or privacy rights arising from or relating to the use or publication of any Custom Form. Ellie Mae shall not be required to provide Updates to such Custom Forms. Section 5.1 herein shall not apply to Custom Forms. Notwithstanding anything herein or in the Agreement stated to the contrary, Ellie Mae's warranty as to Custom Forms shall be limited to the warranty set forth in this Section 2.5. For the avoidance of doubt, the warranty provisions in Section 4.1 of the Agreement shall not apply to Custom Forms.
- 2.6 Customer Service Support.** Ellie Mae shall provide or cause others to provide Customer with telephone access to Ellie Mae's customer service support personnel Monday through Friday, from 6:00 a.m. to 5:30 p.m., Pacific Time, excluding federal holidays, for the purposes of supporting Customer's use of the Software. System Requirements and any and all communications lines are the sole responsibility of Customer.
- 2.7 Software for Remote Locations.** Ellie Mae agrees to provide, in a tangible medium, copies of the Software, or otherwise make the Software available via the Internet or other digital electronic means, to a reasonable number of additional Remote Locations for the purpose of permitting attorneys and settlement agents selected by Customer to retrieve and print Loan Documents that have been prepared by Customer using the Software. The number, identity and timing of delivery or availability of such Software to Remote Locations shall be mutually agreeable to both parties. Ellie Mae shall not be responsible for installing the Software at any Remote Location, for providing any necessary hardware or for any telecommunications lines or costs.

**Article III: Obligations of Customer**

- 3.1 Provide System Requirements.** Customer shall provide, at its own expense, the hardware and an operating system that meets or exceeds the System Requirements, as such may be revised from time to time by Ellie Mae upon no less than thirty (30) days prior written notice to Customer.
- 3.2 Review of Loan Documents.** Within thirty (30) days after Customer first uses the Software to produce Loan Documents (even if such Loan Documents are prepared as a test or sample), Customer agrees to fully test the Loan Documents and the Closing Documents Packages for each Loan Program, including each variable for each Loan Program, to ensure that the form and content of the Loan Documents as well as the content of the Closing Documents Packages is satisfactory to it and that all data are placed in the Loan Documents in a manner satisfactory to Customer. Customer agrees to notify Ellie Mae, in writing, of defects, if any, in such Loan Documents and Closing Documents Packages within such thirty (30) day period, and if Customer does not notify Ellie Mae within such thirty (30) day period, then Customer shall be deemed to have approved such Loan Documents and Closing Documents Packages. If Customer notifies Ellie Mae, in writing, of any defect within such thirty (30) day period, then Ellie Mae will correct such defect and, upon its receipt of notification that the defect has been cured, Customer shall have another thirty (30) day period to fully test the Loan Documents and the Closing Documents Packages for each Loan Program, including each variable for each Loan Program, to ensure that the form and content of the Loan Documents and the Closing Documents Packages is satisfactory to it and that all data are placed in the Loan Documents and the Closing Documents Packages in a manner satisfactory to Customer. Customer agrees to notify Ellie Mae, in writing, of defects, if any, in such Loan Documents, and Closing Documents Packages within such thirty (30) day period, and if Customer does not notify Ellie Mae within such thirty (30) day period, then Customer shall be deemed to have approved such Loan Documents and Closing Documents Packages.
- 3.3 Unauthorized Practice of Law.** In order to protect Customer and Ellie Mae from charges that either Customer or Ellie Mae are or have engaged in the unauthorized practice of law in the course of performing their respective duties and obligations hereunder, Customer agrees not to use the Software or Encompass Closer to prepare mortgages, deeds of trust, promissory notes, deeds or other documents affecting title to real property in states where Customer is prohibited from doing so. Notwithstanding the foregoing, if applicable state law or interpretations thereof permit Customer to prepare mortgages, deeds of trust, promissory notes, deeds or other documents affecting title to real property so long as a licensed attorney reviews, approves, and/or revises, as appropriate, such documents after they have been prepared, Customer may use the Software and Encompass Closer to prepare such documents provided that the same are reviewed and approved by an attorney licensed in that jurisdiction. **BY EXECUTING THE AGREEMENT, CUSTOMER ACKNOWLEDGES ITS UNDERSTANDING AND HEREBY AGREES THAT ITS USE OF THE SOFTWARE AND/OR ENCOMPASS CLOSER IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY.**

**Article IV: Limitation of Warranties**

- 4.1 EXCEPT FOR THE LIMITED WARRANTIES PROVIDED IN ARTICLES II AND V OF THIS EXHIBIT B, THE PROGRAMMED FORMS PROVIDED PURSUANT TO THIS EXHIBIT B ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS WITHOUT ANY WARRANTY OF ANY NATURE. ELLIE MAE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF ELLIE MAE HAS BEEN INFORMED OF SUCH PURPOSE, AS WELL AS ALL WARRANTIES ARISING FROM A COURSE OF DEALING OR CUSTOM OF TRADE WITH RESPECT TO THE PROGRAMMED FORMS AND ANY OTHER MATERIALS PROVIDED PURSUANT TO THIS EXHIBIT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM ELLIE MAE OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE WARRANTY PROVISIONS IN SECTION 4.1 OF THE AGREEMENT SHALL NOT APPLY TO THE CLOSING DOCUMENT PACKAGES, THE PROGRAMMED FORMS AND/OR THE OTHER MATERIALS OR SERVICES PROVIDED BY THIS EXHIBIT B.**
- 4.2 Remedies.** NOTWITHSTANDING ANYTHING HEREIN OR IN THE AGREEMENT STATED TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER MUST SUBMIT ANY CLAIM ALLEGING A MATERIAL BREACH OF ANY OF ELLIE MAE'S WARRANTIES SET FORTH IN THIS EXHIBIT B IN WRITING EITHER (A) WITHIN 90 DAYS FROM THE DATE CUSTOMER FIRST DISCOVERS THE ALLEGED MATERIAL BREACH IF THE MATERIAL BREACH RELATES TO ONE OR MORE OF THE WARRANTIES RELATING TO THE USE OF THE SOFTWARE AS IT RELATES TO THE PROGRAMMED FORMS; OR (B) WITHIN 90 DAYS AFTER THE DATE UPON WHICH FUNDS ARE DISBURSED TO OR FOR THE BENEFIT OF THE BORROWER WITH RESPECT TO A LOAN PROGRAM WHICH IS AFFECTED BY THE ALLEGED MATERIAL BREACH IF THE MATERIAL BREACH RELATES TO USE OF THE PROGRAMMED FORMS. UPON ELLIE MAE'S RECEIPT OF A WRITTEN NOTICE FROM CUSTOMER DURING THE TERM OF THIS AGREEMENT ALLEGING A MATERIAL BREACH OF ANY OF ELLIE MAE'S WARRANTIES SET FORTH IN THIS EXHIBIT B, ELLIE MAE SHALL PROMPTLY INVESTIGATE THE ALLEGED BREACH. IF ELLIE MAE DETERMINES THAT A MATERIAL BREACH HAS OCCURRED, THEN ELLIE MAE SHALL REPAIR OR REPLACE THE DEFECTIVE LOAN DOCUMENT OR PROGRAMMED FORM SO AS TO CURE SUCH BREACH IN ALL MATERIAL RESPECTS. NOTWITHSTANDING ANYTHING HEREIN OR IN THE AGREEMENT STATED TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT ELLIE MAE'S OBLIGATIONS TO REPAIR OR REPLACE THE DEFECTIVE LOAN DOCUMENT OR PROGRAMMED FORM CONSTITUTE CUSTOMER'S SOLE REMEDIES HEREUNDER AND UNDER THE AGREEMENT.

**Article V: Compliance with Applicable Laws.** Except as to Custom Forms, which are governed by Section 2.5, Ellie Mae warrants that the Loan Documents will comply with (a) the Federal Truth in Lending Act, including but not limited to the calculation of the APR, (b) the Real Estate Settlement Procedures Act, (c) the mortgage lending statutes applicable to creditor entity type shown in the worksheet completed by Customer ("entity type") in the respective states in which the Loan Documents are intended to be

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used and (d) with respect to any Loan Documents that are required to be recorded, the applicable format requirements required by a county or other applicable governmental entity in order for such Loan Documents to be maintained in such governmental entity's records. Ellie Mae's warranty hereunder is subject to and contingent upon: (i), with respect to compliance with the Federal Truth in Lending Act, Customer's having properly and accurately designated within the Software whether each fee charged in connection with the loan is to be treated as a finance charge or a non-finance charge; (ii) Customer's having properly and accurately provided to Ellie Mae all necessary information for the correct entity type Software setup; and (iii) Customer's having properly and accurately input all data that affects compliance with the various statutes and regulations specified in the preceding sentence.

**Article VI: Indemnification Provisions Related to Encompass Closer**

- 6.1 Indemnification of Customer.** Notwithstanding anything herein or in the Agreement stated to the contrary, subject to Section 6.2 of this Exhibit B, Ellie Mae agrees to indemnify, hold harmless and defend Customer from and against any and all losses, claims, damages, costs, expenses or liabilities, including but not limited to reasonable attorneys' fees and court costs, to which Customer may be subject resulting from any material breach by Ellie Mae of any representation or warranty made by it in this Exhibit B; provided that, Customer immediately notifies Ellie Mae in writing of such claims and Ellie Mae is given the right to control the defense of all such claims. Customer shall not settle any such claim without Ellie Mae's prior written approval. For the avoidance of doubt, the indemnification provisions in Sections 6.1 and 6.3 of the Agreement shall not apply to the Closing Documents Package, Programmed Forms, Loan Documents, Custom Forms and Standard Forms provided under this Exhibit B.
- 6.2 LIMITATION ON DAMAGES.** ELLIE MAE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF REVENUES OR PROFITS, IN CONNECTION WITH OR ARISING OUT OF THIS EXHIBIT B OR THE EXISTENCE, FURNISHING, FUNCTIONING OR USE BY CUSTOMER OF THE PROGRAMMED FORMS, EVEN IF ELLIE MAE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT WITH RESPECT TO WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF ELLIE MAE TO CUSTOMER ARISING FROM THE PERFORMANCE, OR THE FAILURE OF PERFORMANCE, OF ELLIE MAE OF ITS OBLIGATIONS UNDER THIS EXHIBIT, SHALL IN NO EVENT EXCEED THREE MONTHS OF ENCOMPASS CLOSER PRODUCT FEES PAID HEREUNDER BY CUSTOMER TO ELLIE MAE DURING THE THREE (3) MONTHS PRECEDING THE DATE THAT THE CAUSE OF ACTION AROSE. NO ACTION UNDER THIS ARTICLE VI SHALL BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN. FOR THE AVOIDANCE OF DOUBT, THE LIMITATIONS OF LIABILITY PROVISIONS IN SECTION 5.2 OF THE AGREEMENT SHALL NOT APPLY TO THE CLOSING DOCUMENTS PACKAGE, PROGRAMMED FORMS, LOAN DOCUMENTS, CUSTOM FORMS, STANDARD FORMS OR ANY OTHER SERVICES PROVIDED UNDER THIS EXHIBIT B.



**EXHIBIT C**  
**TERMS AND CONDITIONS FOR THE ENCOMPASS COMPLIANCE SERVICE**

The following terms shall apply to the use of Ellie Mae's Encompass Compliance Service, which is included as an option to the Encompass360 Software licensed under this Agreement, to the extent that such right to use is purchased by Customer in accordance with, and at the fees set forth in, the Order Form and/or the Encompass Compliance Service Payment Authorization Screen:

**Article I: Definitions**

Unless otherwise provided within this Exhibit, all terms used herein shall have the meanings set forth in the Agreement.

1.1 "Compliance Specifications" shall mean Ellie Mae's standard compliance reviews, comparisons, tests, functions and calculations used within the Encompass Compliance Service to provide compliance reviews of Customer Data.

1.2 "Encompass Compliance Service" shall mean the compliance reviews provided by Ellie Mae, which may be modified from time to time, but which currently include the following compliance reviews from which Customer may choose to submit loans processed using the Encompass360™ Software: Federal Truth in Lending Act Tolerance Tests and MDIA; Federal (HOEPA), State, and Local High Cost APR and Points and Fees Thresholds Review; Federal Higher Priced Mortgage Review; State Consumer Credit Law Review; Home Mortgage Disclosure Act (HMDA) Review; and the GSE Requirements consisting of the Approved Fannie Mae Points & Fees, Approved Freddie Mac Points & Fees, and "HUD-HOEPA" Mortgage High Cost Thresholds Review.

1.3 "Processed Loan" shall mean Customer Data describing an underlying loan file that is submitted to the Encompass Compliance Service for processing and for which the Encompass Compliance Service has returned or will return a result.

1.4 "Customer Data" shall mean loan file data Customer enters into the Encompass360 Software.

**Article II: The Encompass Compliance Services**

2.1 **The Encompass Compliance Service.** Subject to the terms and conditions of this Exhibit C and the Agreement, during the term of the Agreement, Ellie Mae will provide Customer an automated review of Customer Data Customer submits for compliance review through its use of the Encompass Compliance Service function within the Encompass360 Software. The Encompass Compliance Service is provided to Customer by Ellie Mae as an added feature to Customer's use of the Encompass360 Software and such use is subject to the applicable Encompass Compliance Service Fees set forth in the Order Form and/or in the Encompass Compliance Service Payment Authorization Screen used for signing up to the Encompass Compliance Service. There is no limit on the number of Processed Loans submitted by Customer through the Encompass Compliance Service.

2.2 **Customer Obligations.** In addition to its other obligations in the Agreement, Customer shall be responsible for the following: (a) providing to Ellie Mae, in a timely manner, all information, data (including Customer Data) and cooperation reasonably requested by Ellie Mae; (b) access to Customer's decision makers and subject matter experts, all as reasonably required to enable Ellie Mae to provide the Encompass Compliance Service; (c) ensuring the accuracy and completeness of the Customer Data; (d) using the Encompass Compliance Service in accordance with Ellie Mae's then current usage policies, documentation and instructions; and (e) correctly entering, importing or otherwise submitting Customer Data into the Encompass360 Software, including correctly mapping loan fees directly to the Encompass Compliance Service. Other than the Encompass Compliance Service provided to Customer by Ellie Mae under the Agreement, Customer, at its sole cost and expense, shall be responsible to provide, install, operate and maintain all other resources on its network as required for Ellie Mae to provide the Encompass Compliance Service under the Agreement.

**Article III: Compliance Warranty**

3.1 **Warranty.** Ellie Mae represents and warrants that, subject to the Warranty Limitations set forth below in Section 3.2, in conducting the Encompass Compliance Service (a) Customer Data will be processed substantially in accordance with Ellie Mae's Compliance Specifications for the Encompass Compliance Service reviews chosen by Customer and (b) the Encompass Compliance Service will operate substantially in conformance with all such Compliance Specifications. For the avoidance of doubt, the warranty provisions in Section 4.1 of the Agreement shall not apply to the Encompass Compliance Service provided under this Exhibit C.

3.2 **Warranty Limitations.** Notwithstanding anything in this Exhibit or the Agreement to the contrary, Customer remains solely responsible for ensuring that its business activities comply with applicable laws, rules or regulations ("Applicable Laws"). Ellie Mae is not liable for warranty breaches caused by (a) errors by Customer or by a third party in mapping Customer Data directly to the Encompass Compliance Service; (b) errors by Customer or by a third party in manually entering Customer Data into the Encompass360 Software; (c) Customer's other misuse of the Encompass Compliance Service; (d) problems or defects in hardware, software, databases, or networks external to the Encompass360 Software or the Encompass Compliance Service; (e) problems or defects in Customer Data, including inaccurate or incomplete loan data, or any data obtained from a governmental or regulatory agency to the extent such data is inaccurate, incomplete or not current; or (f) any failure by Customer to comply with its obligations and responsibilities set forth in the Agreement. Customer acknowledges that it remains primarily responsible to discharge its due diligence activities with respect to the Processed Loans for which it utilizes the Encompass Compliance Service, and that Ellie Mae is

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only assisting Customer to do so under this Agreement. Customer is responsible for reviewing the results of the Encompass Compliance Service and acting in relation to such results. Customer acknowledges and agrees that notwithstanding any other warranties set forth in the Agreement, the warranties and their limitations set forth in Sections 3.1 and 3.2, respectively, shall control regarding the Encompass Compliance Service.

**3.3 Modifications to the Encompass Compliance Service.** Ellie Mae may modify the Compliance Specifications from time to time to reflect changes in Applicable Laws and/or changes in Ellie Mae's operating procedures. Further, Ellie Mae reserves the right to change, modify, upgrade, replace, reconfigure or relocate the Encompass Compliance Service; provided that Ellie Mae continues to provide the Encompass Compliance Service substantially in accordance with the requirements of this Exhibit.

**3.4 ACKNOWLEDGEMENT AND DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ENCOMPASS COMPLIANCE SERVICE IS INTENDED TO ASSIST CUSTOMER IN COMPLYING WITH APPLICABLE LAWS, AND THAT CUSTOMER SHALL REMAIN FULLY RESPONSIBLE FOR COMPLYING WITH APPLICABLE LAWS. EXCEPT FOR THE COMPLIANCE WARRANTY IN SECTION 3.1, THE ENCOMPASS COMPLIANCE SERVICE IS PROVIDED "AS IS" AND ELLIE MAE MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, STATUTORY, OR IMPLIED REGARDING THE ENCOMPASS COMPLIANCE SERVICE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY THAT THE ENCOMPASS COMPLIANCE SERVICE WILL RESULT IN CUSTOMER'S COMPLIANCE WITH ALL APPLICABLE LAWS, THAT THE ENCOMPASS COMPLIANCE SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR THAT THE ENCOMPASS COMPLIANCE SERVICE WILL MEET THE REQUIREMENTS OF CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ENCOMPASS COMPLIANCE SERVICE DOES NOT INCLUDE, AND ELLIE MAE IS NOT PROVIDING, LEGAL SERVICES OR LEGAL ADVICE TO CUSTOMER UNDER THIS EXHIBIT C AND/OR THE AGREEMENT.

**Article IV: LIMITATION OF LIABILITY**

IN NO EVENT SHALL ELLIE MAE BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING ANY INTERRUPTION OF THE ENCOMPASS COMPLIANCE SERVICE, LOST PROFITS, OR LOSS OR CORRUPTION OF CUSTOMER DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH DAMAGES WERE FORESEEABLE. CUSTOMER ACKNOWLEDGES AND AGREES THAT NOTWITHSTANDING ANYTHING ELSE SET FORTH IN THE AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF ELLIE MAE FOR CLAIMS ARISING UNDER CUSTOMER'S USE OF THE ENCOMPASS COMPLIANCE SERVICE, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY), TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00). CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS SECTION IS AN ESSENTIAL ELEMENT OF THE PROVISION OF THE ENCOMPASS COMPLIANCE SERVICE AND OF THIS EXHIBIT AND THAT IN ITS ABSENCE, THE ECONOMIC TERMS OF ELLIE MAE PROVIDING THE ENCOMPASS COMPLIANCE SERVICE UNDER THIS EXHIBIT WOULD BE SUBSTANTIALLY DIFFERENT. FOR THE AVOIDANCE OF DOUBT, THE LIMITATIONS OF LIABILITY PROVISIONS IN SECTION 5.2 OF THE AGREEMENT SHALL NOT APPLY TO THE ENCOMPASS COMPLIANCE SERVICE PROVIDED UNDER THIS EXHIBIT C.